

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Panola County, Texas	)	MB Docket No. 18-337
	)	CSR No. 8965-A
	)	
Petitions for Modification of the Satellite	)	MB Docket No. 18-338
Television Markets of KFXK-TV, Longview,	)	CSR No. 8966-A
Texas and KLTV, Tyler, Texas	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 6, 2019**

**Released: March 6, 2019**

By the Senior Deputy Chief, Media Bureau, Policy Division

**I. INTRODUCTION**

1. Panola County, Texas (Petitioner or the County), with the support of its residents, has filed two market modification petitions to make two Texas television stations (collectively, the Stations) available to satellite television subscribers in the County. For historical and geographic reasons, residents in the County generally receive only Louisiana television stations, limiting their access to Texas-specific news, sports, weather, and politics. With this Memorandum Opinion and Order (Order), the Media Bureau grants both Petitions in full.

2. Specifically, Petitioner filed the above-captioned Petitions seeking to modify the local satellite carriage television markets of the Stations to include Panola County, which is assigned to the Shreveport, Louisiana Designated Market Area (DMA).<sup>1</sup> The Stations, both of which are located in the Tyler-Longview, Texas DMA,<sup>2</sup> are: KFXK-TV, Longview, Texas (FOX) (Channel 51) (Facility ID No. 70917) (KFXK) and KLTV, Tyler, Texas (ABC) (Channel 7) (Facility ID No. 68540) (KLTV).<sup>3</sup> Prior to filing the Petitions, the County reached out to both DBS carriers.<sup>4</sup> In response to the County, DISH Network LLC (DISH) and DIRECTV, LLC (DIRECTV) filed Certifications regarding the technical and

<sup>1</sup>See *Panola County, Texas Petition for Special Relief for Modification of the Television Market of Station KFXK-TV (FOX), (Channel 51) Tyler/Longview, Texas with Respect to DISH Network and DIRECTV*, MB Docket 18-337 (filed November 6, 2018) (*KFXK Petition*); *Panola County, Texas Petition for Special Relief for Modification of the Television Market of Station KLTV (ABC), (Channel 7), Tyler/Longview, Lufkin, Nacogdoches, Texas with Respect to DISH Network and DIRECTV*, MB Docket 18-338 (filed November 6, 2018) (*KLTV Petition*) (collectively, the *Petitions*). The Media Bureau placed the Petitions on public notice and sought comment. *Special Relief and Show Cause Petitions*, Public Notice, Report No. 0474 (MB November 8, 2018) (*Public Notice*).

<sup>2</sup> The DMA is also referred to as “Tyler-Longview (Lufkin and Nacogdoches).”

<sup>3</sup> *Petitions* at 1.

<sup>4</sup> *Id.* 6-7; Exhibits 8 and 10.

economic feasibility of the proposed modifications.<sup>5</sup> Both carriers acknowledge that they provide full coverage of the County with the high definition (HD) and standard definition (SD) spot beams currently carrying the Stations, although DISH argues that carriage of the Stations nonetheless is infeasible.<sup>6</sup> DISH also filed a Partial Opposition to the Petitions.<sup>7</sup> The Petitions were otherwise unopposed. Each Petition has been reviewed on its individual merits. However, because the Petitions were filed simultaneously and are effectively identical, and because the Stations are identically situated with respect to the feasibility of their carriage into the County, we have consolidated our decisions into this single Order for the sake of administrative efficiency.

## II. BACKGROUND

3. Section 338 of the Communications Act authorizes satellite television carriage of local broadcast stations into their local markets, which is called “local-into-local” service.<sup>8</sup> A satellite carrier provides “local-into-local” service when it retransmits a local television signal back into the local market of that television station for reception by subscribers.<sup>9</sup> Generally, a television station’s “local market” is defined by the Designated Market Area (DMA) in which it is located, as determined by the Nielsen Company (Nielsen).<sup>10</sup> DMAs describe each television market in terms of a group of counties and are determined by Nielsen based on measured viewing patterns.<sup>11</sup>

4. The STELA Reauthorization Act of 2014 (STELAR) added satellite television carriage to the Commission’s market modification authority, which previously applied only to cable television carriage.<sup>12</sup> Market modification, which long has existed in the cable context, provides a means for the Commission to modify the local television market of a commercial television broadcast station and thereby avoid rigid adherence to DMAs. Specifically, to better reflect market realities, STELAR permits the Commission to add communities to, or delete communities from, a station’s local television market for purposes of satellite carriage, following a written request.<sup>13</sup> In the Commission’s 2015 *STELAR Market Modification Report and Order*, the Commission adopted satellite television market modification rules that provide a process for broadcasters, satellite carriers, and county governments to request changes to the boundaries of a particular commercial broadcast television station’s local television market to include a new

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<sup>5</sup> Letter from Alison Minea, Director & Senior Counsel, Regulatory Affairs, DISH Network L.L.C., to Lee Ann Jones, County Judge, County of Panola, MB Docket No. 15-71 (June 26, 2018) (*DISH Certification*); Letter from Amanda E. Potter, Assistant Vice President-Senior Legal Counsel, AT&T, to Marlene Dortch, Secretary, FCC, MB Docket No. 15-71 (Aug. 16, 2018) (*DIRECTV Certification*).

<sup>6</sup> *DISH Certification* at 2-3.

<sup>7</sup> Partial Opposition of DISH Network L.L.C. to Petitions for Special Relief, MB Dockets 18-337 and 18-338 (filed November 28, 2018) (*DISH Partial Opposition*).

<sup>8</sup> 47 U.S.C. § 338(a)(1).

<sup>9</sup> 47 CFR § 76.66(a)(6). Pursuant to Section 338, satellite carriers are not required to carry local broadcast television stations; however, if a satellite carrier chooses to carry a local station in a particular DMA in reliance on the local statutory copyright license, it generally must carry any qualified local station in the same DMA that makes a timely election for retransmission consent or mandatory carriage. See 17 U.S.C. § 122. Satellite carriers have a statutory copyright license under the 1999 Satellite Home Viewer Improvement Act (SHVIA) for carriage of stations to any subscriber within a station’s local market (Satellite Home Viewers Improvement Act of 1999 (SHVIA), Pub. L. No. 106-113, 113 Stat. 1501 (1999)). See also 47 U.S.C. § 338(a)(1); 47 CFR § 76.66(b)(1). This is commonly referred to as the “carry one, carry all” requirement.

<sup>10</sup> See 17 U.S.C. § 122(j)(2); 47 CFR § 76.66(e) (defining a television broadcast station’s local market for purposes of satellite carriage as the DMA in which the station is located).

<sup>11</sup> The Nielsen Company delineates television markets by assigning each U.S. county (except for certain counties in Alaska) to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, Nielsen includes both over-the-air and multichannel video programming distributor (MVPD) viewing.

community located in a neighboring local market.<sup>14</sup> The rules enable a broadcast television station to be carried by a satellite carrier in such a new community if the station is shown to have a local relationship to that community.

5. By extending the market modification process to satellite television, Congress sought to address the so-called “orphan county” problem. An orphan county is a county that, as a result of the structure of the local television markets, is served exclusively, or almost exclusively, by television stations coming from a neighboring state.<sup>15</sup> Satellite television subscribers residing in an orphan county often are not able to access their home state’s news, politics, sports, emergency information, and other television programming. Providing the Commission with a means to address this problem by altering the structure of specific stations’ local markets was a primary factor in Congress’ decision to extend market modification authority to the satellite context.<sup>16</sup>

6. Section 338(l) of the Act, added by the STELAR, creates a satellite market modification regime very similar to that already in place for cable television, while adding provisions to address the unique nature of satellite television service, particularly issues of technical and economic feasibility that are specific to satellite operations.<sup>17</sup> The STELAR carves out an exception to carriage obligations<sup>18</sup> resulting from a market modification that would be technically or economically infeasible for a satellite carrier to implement. The statute provides that a market modification “shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.”<sup>19</sup> In enacting this provision, Congress recognized that the unique nature of satellite television service may make a particular market modification difficult for a satellite carrier to effectuate using its satellites in operation at the time of the determination and thus exempted the carrier from the resulting carriage obligation under those circumstances.<sup>20</sup> This exception applies only in the satellite context.<sup>21</sup>

7. In the *STELAR Market Modification Report and Order*, the Commission concluded that the satellite carrier has the burden to demonstrate that carriage resulting from a market modification would be

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<sup>12</sup> The STELA Reauthorization Act of 2014, § 102, Pub. L. No. 113-200, 128 Stat. 2059, 2060-62 (2014) (STELAR) (adding 47 U.S.C. § 338(l)). “STELA” refers to the Satellite Television Extension and Localism Act of 2010, Pub. L. No. 111-175.

<sup>13</sup> See also Consolidated Appropriations Act of 2019, Pub. L. No. 116-6 (Feb. 15, 2019); Conference Report (H. Rept. 116-9) at 673 (noting that “despite the reforms made in STELAR, many communities continue to struggle with market modification petitions,” and directing the Commission to continue to “provide a full analysis to ensure decisions on market modification are comprehensively reviewed and STELAR’s intent to promote localism is retained” and “adhere to statutory requirements and congressional intent when taking administrative action under STELAR.”).

<sup>14</sup> *Amendment to the Commission’s Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014*; MB Docket No. 15-71, Report and Order, 30 FCC Rcd 10406 (2015) (*STELAR Market Modification Report and Order*) (revising 47 CFR § 76.59). The rules would also permit the exclusion of a community from a station’s local market, if the station is shown to have no relationship to the community. A community is defined as a county for purposes of the satellite market modification rules. 47 CFR § 76.5(gg)(2).

<sup>15</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10408, para. 3.

<sup>16</sup> See generally Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113<sup>th</sup> Cong., S. Rep. No. 113-322 (2014) (*Senate Commerce Committee Report*).

<sup>17</sup> See 47 U.S.C. §§ 338(l), 534(h)(1)(C) (providing factors the Commission must take into account when considering satellite market modification requests). The Commission may determine that particular communities are part of more than one television market. 47 U.S.C. § 338(l)(2)(A). When the Commission modifies a station’s market to add a community for purposes of carriage rights, the station is considered local and is covered by the local statutory copyright license and may assert mandatory carriage (or pursue retransmission consent) with the applicable satellite carrier in the local market. Conversely, if the Commission modifies a station’s market to delete a

infeasible.<sup>22</sup> The Commission requires different demonstrations of infeasibility depending on whether the claim of infeasibility is based on insufficient spot beam coverage or some other basis.<sup>23</sup> Satellite carriers use spot beams to offer local broadcast stations to targeted geographic areas.<sup>24</sup> With respect to claims of “spot beam coverage infeasibility,” the Commission concluded that “it is *per se* not technically and economically feasible for a satellite carrier to provide a station to a new community that is, or to the extent to which it is, outside the relevant spot beam on which that station is currently carried.”<sup>25</sup> With respect to other possible bases for a carrier to assert that carriage would be technically or economically infeasible, such as costs associated with changes to customer satellite dishes to accommodate reception from different orbital locations, the Commission determined that it will review infeasibility claims on a case-by-case basis.<sup>26</sup>

8. Once the threshold issue of technical and economic feasibility is resolved, Section 338(l) provides that the Commission must afford particular attention to the value of localism in ruling on requests for market modification by taking into account the following five factors:

- (1) whether the station, or other stations located in the same area—(a) have been historically carried on the cable system or systems within such community; and (b) have been historically carried on the satellite carrier or carriers serving such community;
- (2) whether the television station provides coverage or other local service to such community;
- (3) whether modifying the local market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence;
- (4) whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and
- (5) evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such

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community, the station is considered “distant” and loses its right to assert mandatory carriage (or retransmission consent) on the applicable satellite carrier in the local market.

<sup>18</sup> See *supra* note 9 (describing the “carry one, carry all” satellite carriage requirement).

<sup>19</sup> 47 U.S.C. § 338(l)(3)(A).

<sup>20</sup> *Senate Commerce Committee Report* at 11 (recognizing “that there are technical and operational differences that may make a particular television market modification difficult for a satellite carrier to effectuate.”).

<sup>21</sup> In the cable context, if review of the factors and other evidence demonstrates that a community is part of a station’s market, the modification is granted without reference to issues of technical and economic feasibility. As explained in the *STELAR Market Modification Report and Order*, Congress recognized “the inherent difference between cable and satellite television service” by adopting certain “provisions specific to satellite,” including 47 U.S.C. § 338(l)(3)(A)’s feasibility exception. 30 FCC Rcd at 10408, n.6.

<sup>22</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10435, para. 38 (observing that, as a practical matter, only the satellite carriers have the specific information necessary to determine if the carriage contemplated in a market modification would not be technically and economically feasible by means of their satellites in operation).

<sup>23</sup> *Id.* at 10435-6, 10438, paras. 39, 42.

<sup>24</sup> *Id.* at 10430, n.162 (quoting DIRECTV to explain that “[s]pot-beam technology divides up a portion of the bandwidth available to a satellite into beams that cover limited geographic areas” and that “[d]oing so allows particular sets of frequencies to be reused many times. This spectral efficiency unlocked the potential for satellite carriers to offer local broadcast signals in the late 1990s, and it enables satellite carriers to offer local service today.”) This is in contrast to a “CONUS” beam, which provides coverage to the entire continental United States and generally carries signals that are available and accessed by subscribers throughout that entire area).

<sup>25</sup> *Id.* at 10429-30, para. 30. This is because the only available options to implement the market modification would be: (1) to put the signal on the satellite provider’s CONUS beam (using spectrum that could otherwise be deployed

multichannel video programming distributors in such community.<sup>27</sup>

The five statutory factors are not intended to be exclusive. Each factor is valuable in assessing whether a particular community should be included in or excluded from a station's local market. The importance of particular factors will vary depending on the circumstances of each case. The Commission may also consider other relevant information.<sup>28</sup>

9. Significantly, in the *STELAR*, Congress added the new statutory factor three quoted above, requiring consideration of access to television stations that are located in the same state as the community considered for modification.<sup>29</sup> This new factor and the legislative history reflect Congress's intent to promote consumer access to in-state and other relevant television programming. Indeed, the legislative history expresses Congress's concern that "many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances," may "lack access to local television programming that is relevant to their everyday lives" and indicates Congress's intent that the Commission "consider the plight of these consumers when judging the merits of a [market modification] petition . . . , even if granting such modification would pose an economic challenge to various local television broadcast stations."<sup>30</sup>

10. In the *STELAR Market Modification Report and Order*, the Commission determined that a satellite market modification petition must include specific evidence describing the station's relationship to the community at issue. This standardized evidence approach was based on the existing approach for cable market modifications.<sup>31</sup> Accordingly, the rules require that the following evidence be submitted:

- (1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend or satellite carrier local receive facility locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market;
- (2) Noise-limited service contour maps delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas;

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for signals available to subscribers throughout the entire continental U.S.); (2) to reorient existing spot beams (which are already oriented to most efficiently serve the largest number of subscribers); or (3) to carry the same signal on an additional spot beam (using twice as much overall spectrum for the channel at issue as for other channels, which are carried on a single spot beam whenever possible). The Commission found each of these options infeasible. *Id.* at 10431-32, para. 32. The Commission allows satellite carriers to demonstrate spot beam coverage infeasibility by providing a detailed and specialized certification, under penalty of perjury. *Id.* at 10435-36, para. 39.

<sup>26</sup> *Id.* at 10438, para. 42. To demonstrate such infeasibility, the Commission requires carriers to provide detailed technical and/or economic information to substantiate its claim of infeasibility. *Id.*; see also *id.* at 10434-35, para. 36 (requiring satellite carriers to demonstrate infeasibility for reasons other than insufficient spot beam coverage "through the submission of evidence specifically demonstrating the technical or economic reason that carriage is infeasible").

<sup>27</sup> 47 U.S.C. § 338(l)(2)(B)(i)-(v).

<sup>28</sup> Section 338(h)(1)(C)(ii) of the Act directs the Commission to "afford particular attention to the value of localism by taking into account *such factors as*" those listed above (emphasis added). 47 U.S.C. § 338(h)(1)(C)(ii). The Commission must also consider other relevant information, however, when necessary to develop a result that will "better effectuate the purposes" of the law. See 47 U.S.C. § 338(l)(1); *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, CS Docket No. 95-178, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366, 8389, para. 53 (1999) (*Cable Market Modification Second Report and Order*).

<sup>29</sup> See 47 U.S.C. §§ 338(l)(2)(B)(iii), 534(h)(1)(C)(ii)(III).

<sup>30</sup> *Senate Commerce Committee Report*, S. Rep. No. 113-322 at 11.

<sup>31</sup> See *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10421-22, para. 20.

- (3) Available data on shopping and labor patterns in the local market;
- (4) Television station programming information derived from station logs or the local edition of the television guide;
- (5) Cable system or satellite carrier channel line-up cards or other exhibits establishing historic carriage, such as television guide listings;
- (6) Published audience data for the relevant station showing its average all day audience (*i.e.*, the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both multichannel video programming distributor (MVPD) and non-MVPD households or other specific audience information, such as station advertising and sales data or viewer contribution records; and
- (7) If applicable, a statement that the station is licensed to a community within the same state as the relevant community.<sup>32</sup>

Petitions for special relief to modify satellite television markets that do not include the above evidence may be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee.<sup>33</sup> The Bureau may waive the requirement to submit certain evidence for good cause shown, particularly if it is in a position to resolve the petition without such evidence.<sup>34</sup> Parties may submit whatever additional evidence they deem appropriate and relevant.<sup>35</sup>

11. In the instant proceeding, the County filed two Petitions seeking modification of the local television markets of Texas Stations KFXK and KLTV to include Panola County, Texas. During the pre-filing coordination process, the satellite carriers each filed Feasibility Certifications. The *DISH Certification* states that both SD and HD spot beams provide service to all residents in the County, but argues that carriage is infeasible for other reasons.<sup>36</sup> The *DIRECTV Certification* says that HD and SD service to all zip codes in the County is currently feasible.<sup>37</sup> We received supportive comments from several local government officials, including Texas's Senior United States Senator John Cornyn, Congressman Louie Gohmert of the Texas First District, representing Panola County, and Senator Bryan Hughes of the Texas State Senate's First District, which includes Panola County.<sup>38</sup> We also received

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<sup>32</sup> 47 CFR § 76.59(b)(1)-(7).

<sup>33</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10424, para. 22.

<sup>34</sup> *Tobacco Valley Communications*, 31 FCC Rcd 8972, 8976 n.22 (MB 2016); 47 CFR § 1.3.

<sup>35</sup> *Id.* We note that although not required by Section 76.59(b), detailed information about programming is extremely important in the orphan county context. Because geographic proximity tests have less significance in orphan county cases than in other market modification cases, programming information has increased importance in consideration of factor two, and it is essential in determining how much weight to give to factor three. We therefore strongly encourage and expect petitioners seeking addition of an orphan county, whether they are broadcasters or the counties themselves, to provide information about specific programming, sports, events, and news stories relevant to the community at issue that have been broadcast by the station(s) at issue, and, if relevant, to also demonstrate that such programming is not regularly broadcast by any station currently serving the county.

<sup>36</sup> *DISH Certification* at 1-3.

<sup>37</sup> *DIRECTV Certification* at 5-6 ("Form of Certification Regarding Spot Beam Coverage" for KFXK and KLTV).

<sup>38</sup> See Letter from Senator John Cornyn to Ajit Pai, Chairman, FCC (June 21, 2018) (*Petitions* at Exhibit 14); Letter from Congressman Louie Gohmert to Ajit Pai, Chairman, FCC (June 26, 2018) (*Petitions* at Exhibit 15); and, Letter from Senator Bryan Hughes to Ajit Pai, Chairman, FCC (June 25, 2018) (*Petitions* at Exhibit 16). Additionally, a letter of support was received from Mayor Lynn C. Vincent of Carthage, Texas (*Petitions* at Exhibit 3). The Petition itself was filed by Presiding Officer and County Judge, Lee Ann Jones, Panola County Commissioners.

resident comments in support of the Petitions.<sup>39</sup> DISH filed a Partial Opposition in this proceeding.<sup>40</sup>

12. The Commission must make two determinations with respect to each of the Petitions: (1) whether the carriage of a station resulting from a proposed market modification is technically and economically feasible for each of the satellite carriers; and (2) if so, whether the Petition demonstrates that a modification to the station's television market is warranted, based on the five statutory factors and any other relevant information.<sup>41</sup>

### III. DISCUSSION

13. For the reasons set forth below, we find that it is feasible for both DISH and DIRECTV to carry KFXK and KLTV throughout the County. We further conclude that the evidence weighs in favor of expanding the markets for each of the Stations to include the County. We therefore modify the markets of KFXK and KLTV to include Panola County, Texas.

14. As an initial matter, we waive certain of the evidentiary requirements of Section 76.59(b)<sup>42</sup> pursuant to the County's request.<sup>43</sup> Specifically, we grant Petitioner's request to waive the requirement to file available data on shopping and labor patterns in the local market, and published audience data.<sup>44</sup> We find good cause to waive these submissions because we have ample evidence to render our decision without them. It is possible that a future case could not be resolved in the absence of this evidence. We therefore strongly encourage future Petitioners to heed the guidance of the Commission and more closely coordinate with the stations at issue in order to provide a full and complete record.<sup>45</sup> This will minimize the danger of a dismissal due to insufficient evidence.

#### A. Technical and Economic Feasibility

15. We find that it is technically and economically feasible for both DISH and DIRECTV to provide each of the Stations to the entirety of Panola County. DIRECTV and DISH each filed Feasibility Certifications during the pre-filing coordination stage. With respect to delivery of each of the Stations into the County, both satellite providers indicate that there is no "spot beam infeasibility," and that relevant spot beams(s) cover all of the County. DIRECTV states that delivery of the signal to Panola County subscribers in both SD and HD is presently feasible, although it notes that the satellite carrying the relevant SD spot beam is scheduled to be removed from service in the near future.<sup>46</sup>

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<sup>39</sup> *Petitions* at Exhibits 1 and 6. In addition, Exhibit 2 lists the names of 21 local citizens who attended the June 12, 2018 meeting where the Panola County Commissioners' Court met in Regular Session and voted unanimously to file the instant market modification petitions with the Commission. The Petitioner states that these 21 citizens in attendance at the meeting spoke in favor of the petitions. *Id.* at 4, Exhibit 2.

<sup>40</sup> See *DISH Partial Opposition*.

<sup>41</sup> 47 U.S.C. § 338(l); see also 47 CFR § 76.59.

<sup>42</sup> 47 CFR § 76.59(b).

<sup>43</sup> *Petitions* at 6; see also *supra* note 34 and accompanying text.

<sup>44</sup> *Id.*; 47 CFR §§ 76.59(b)(3) and (6).

<sup>45</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd 10406 at 10418, para. 14.

<sup>46</sup> *DIRECTV Certification* at 5-6. Specifically, DIRECTV states that "SD coverage will no longer be available after 2018/2019 when the existing MPEG 2 satellite is removed from service." *Id.* In contrast to another recent satellite market modification, the discontinuance of SD service will have no impact on the feasibility of providing the signal since HD carriage will remain available throughout the community. See *La Plata, Colorado Petitions for Modification of the Satellite Television Markets of KDVR-TV, KCNC-TV, KMGH-TV, and KUSA-TV, Denver, Colorado*, MB Docket Nos. 16-366, 16-367, 16-368, and 16-369, Memorandum Opinion and Order, 32 FCC Rcd 1474 at para. 18 (MB 2017); see also *Harrison County, Texas Petitions for Modification of the Satellite Television*

16. DISH states that while its relevant HD satellite spot beam is predicted to adequately cover the County, it is nonetheless both technically and economically infeasible to provide the Stations in HD to subscribers there.<sup>47</sup> DISH asserts that “less than one percent” of its customers in the County have satellite antennas and in-home equipment that were installed to be able to receive that service from the relevant orbital slot.<sup>48</sup> Therefore, DISH argues that it would need to schedule a service visit and change customer equipment for “virtually 100 percent” of its subscribers in the County in order for them to receive the Stations in HD, thus imposing a very substantial cost burden on DISH in addition to being an inconvenience to customers.<sup>49</sup> DISH acknowledges, however, that customers in the County have in-home equipment to receive SD service.<sup>50</sup> Accordingly, DISH partially opposes the Petitions regarding HD carriage of the Stations in the County because it contends such carriage would be technically and economically infeasible within the meaning of Section 76.59(e) of the Rules. It asserts that if the Commission grants the Petitions, its carriage obligations should be limited to SD carriage only.<sup>51</sup>

17. DISH has not provided a detailed cost analysis in this proceeding. Given this lack of evidence, we find that DISH has not met its burden of demonstrating that the costs of providing subscribers access to the Stations amount to technical or economic infeasibility. In addition, we have no reason to believe that the costs involved in carrying the Stations are meaningfully different from those discussed in DISH’s previous unsuccessful attempts to make this argument.<sup>52</sup> In a recent case involving the exact two stations at issue here, KFXK and KLTV, the Bureau determined that DISH was capable of providing both the HD and SD versions of those stations to the entirety of Harrison County, Texas, which is immediately adjacent to Panola County.<sup>53</sup> In that case, DISH argued that Harrison County subscribers would require a second satellite dish and a service call to install it in order to receive HD versions of the stations, but could “likely” receive the SD versions of the stations with the satellite dish and set-top boxes then in place.<sup>54</sup> However, rather than provide a specific percentage of subscribers in Harrison County who could not receive HD service, as it did in this case, DISH asserted that the scenario would provide a “complex patchwork of different customer scenarios.”<sup>55</sup> In the instant case, we recognize that DISH asserts that almost 100 percent of subscribers in Panola County would need to swap out equipment and need a service call in order to receive the HD version of the Stations. However, we believe that these cases are not meaningfully distinct. Just as in *Harrison County*, all relevant DISH subscribers in this case

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*Markets of KLTV, Tyler, Texas and KFXK-TV, Longview, Texas*, MB Docket Nos. 18-24 and 18-25, Memorandum Opinion and Order, 33 FCC Rcd 5272 at para. 16, n.47 (MB 2018) (*Harrison County*).

<sup>47</sup> *DISH Partial Opposition* at 3; *DISH Certification* at 2, paras. 8, 9.

<sup>48</sup> *DISH Partial Opposition* at 3-4; *DISH Certification* at para. 8.

<sup>49</sup> *Dish Partial Opposition* at 4; *Dish Certification* at para. 8.

<sup>50</sup> *Dish Partial Opposition* at 2; *Dish Certification* at para. 7.

<sup>51</sup> *Dish Partial Opposition* at 4; *Dish Certification* at para. 8, 9. 47 C.F.R. § 76.59(e).

<sup>52</sup> See *infra* note 55.

<sup>53</sup> *Harrison County*, 33 FCC Rcd 5272.

<sup>54</sup> *Id.* at 5278, para. 16.

<sup>55</sup> The Media Bureau noted that the claim was analogous to arguments that DISH raised in several other market modification cases that were previously rejected. *Harrison County* 33 FCC Rcd at 5278, para. 16, citing *Gray Television Licensee, LLC For Modification of the Satellite Television Market For WSAW-TV, Wausau, Wisconsin*, MB Docket No. 16-293, Memorandum Opinion and Order, 32 FCC Rcd 668, paras. 17-19 (MB 2017) (*Gray*); *Victory Television Network, Inc. For Modification of the Satellite Television Market For KVTJ-DT, Jonesboro, Arkansas*, MB Docket No. 17-157, Memorandum Opinion and Order, 32 FCC Rcd 7389, para. 16 (MB 2017); *Monongalia County, WV and Preston County, WV Petitions for Modification of the Satellite Television Markets of WDTV, Weston, West Virginia, and WBOY-TV and WVFX, Clarksburg, West Virginia*, MB Docket Nos. 17-274, 17-275, Memorandum Opinion and Order, 33 FCC Rcd 1168, para. 15 (MB 2018).



will be able to receive the Stations in SD without any need for service visits or equipment changes, and DISH has provided no data estimating the potential costs for HD upgrades nor any projections about the number of subscribers likely to ask for an upgrade to HD.<sup>56</sup>

18. We reject DISH's technical and economic infeasibility arguments and find that carriage of the Stations into the entirety of Panola County is feasible for both carriers. As we did in *Gray*, we recognize that "a service change, particularly one involving a service visit and potential new equipment, could create some burden on the few subscribers" who will need additional equipment or services.<sup>57</sup> Accordingly, we again find that if either satellite provider ultimately carries one or both of the Stations after grant of these Petitions, it must do so immediately for subscribers who require only "operational and billing changes" and for new subscribers. If, however, an existing subscriber will require a service visit and/or new equipment in order to receive the Stations, the satellite provider may roll out service at a more measured, non-dilatory pace.<sup>58</sup>

19. Finally, DISH contends that if any of the Stations elects retransmission consent and it is unable to reach an agreement with a given Station, then it would not be possible to provide that Station's signal into the County. DISH then asserts that, in such circumstances, it "may be either technically or economically infeasible, or both, for DISH to launch a customer offering with only the remaining stations that did grant retransmission consent."<sup>59</sup> We once again clarify that the results of private retransmission consent negotiations play no part in the Commission's technical and economic feasibility analysis and are not a proper basis for infeasibility.<sup>60</sup> Therefore, we disregard DISH's arguments on this issue.<sup>61</sup>

#### **B. Orphan County Status**

20. Panola is an "orphan county" with insufficient access to in-state programming and is precisely the type of community that Congress intended to assist by broadening the market modification process.<sup>62</sup> The County is assigned to the Shreveport DMA, which includes nine Louisiana counties, seven counties in Arkansas, one county in Oklahoma, and eight Texas counties.<sup>63</sup> Despite the relatively equal distribution of counties among three of the four states in the DMA, Panola County residents who subscribe to satellite television service are served exclusively by stations from within the state of

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<sup>56</sup> In *Harrison County*, the Bureau noted "that the instant case, in which every subscriber can 'likely' receive a version of both Stations without any change of equipment, may in fact constitute one of the least complex scenarios faced by DISH in market modification proceedings to date." *Harrison County*, 33 FCC Rcd at 5279, n.51.

<sup>57</sup> *Gray*, 32 FCC Rcd at 677, para. 20.

<sup>58</sup> As we did in *Gray*, we also make clear here that DISH and DIRECTV "must ensure that any new customers in [Panola] who subscribe to local-into-local service after grant of this market modification are capable of receiving all local signals [the providers have] the right to provide immediately upon beginning service, including [the Stations] if [they are] carried after grant of this Petition. *Gray*, 32 FCC Rcd 677, para. 20.

<sup>59</sup> *DISH Certification* at 2, paras. 11-13; *DISH Partial Opposition* at n.17.

<sup>60</sup> See *Franklin County, Georgia Petitions for Modification of the Satellite Television Markets of WSB-TV, WAGA, WXIA and WGCL, Atlanta, Georgia*, MB Docket Nos. 18-158, 18-159, 18-160, and 18-161, Memorandum Opinion and Order at para. 15, DA 18-954 (MB 2018).

<sup>61</sup> We note that a satellite carrier may not carry a station with which it has not reached retransmission consent, unless that station has expressly elected mandatory carriage.

<sup>62</sup> The "core purpose of this [market modification] provision of the STELAR [is] to promote consumer access to in-state and other relevant programming." *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10415, para. 12.

<sup>63</sup> See <http://krgspec.com/MarketSearch.aspx?DMAID=111>.

Louisiana.<sup>64</sup> The Petitioner asserts that Panola County residents who subscribe to satellite television service have been deprived of the ability to receive preferred in-state Texas television broadcast stations and instead are relegated to local broadcast content oriented to Louisiana.<sup>65</sup> The Petitioner argues that residents of the County are currently underserved by the broadcast stations in the current DMA because they are deprived of in-state news, politics, sports, weather, and emergency information.<sup>66</sup> This claim is supported by comments from County residents and their representatives.<sup>67</sup>

21. With the STELAR's revisions to the market modification process, and its addition of a satellite market modification process, Congress expressly intended to address orphan county situations like that of Panola County.<sup>68</sup> Indeed, the legislative history observes that "many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances," may "lack access to local television programming that is relevant to their everyday lives" and instructs us to "consider the plight of these consumers when judging the merits of a [market modification] petition . . . , even if granting such modification would pose an economic challenge to various local television broadcast stations."<sup>69</sup> As we observed in the *STELAR Market Modification Report and Order*, "each petition for market modification will turn on the unique facts of the case," and there is no single universal way to weight the statutory factors.<sup>70</sup> In order to best effectuate the goals of the STELAR, we place a strong emphasis on Congress' concern about orphan county situations in analyzing the factors in this case.<sup>71</sup> We therefore will give substantial weight to the local and in-state programming a petitioner proposes to bring to the orphan counties, as well as to government official and consumer comments supporting a proposed market modification.<sup>72</sup> In this case, grant of the market modification request would bring much desired in-state programming to Panola County, and the request is supported by comments from government officials and local residents.

22. Panola is an orphan county in the unusual circumstance of having geographic proximity to the in-state Stations in this proceeding. As we have explained previously, heavy reliance on geographic proximity tests, which are central to a traditional market modification analysis, is often inappropriate in orphan county cases, given the "remote geographic location of orphan counties"<sup>73</sup> and the fact that they are by definition on the outskirts of a petitioner's home state. In this case, however, the County demonstrates that both of the Stations provide it with significant over-the-air signal coverage, one of the most important geographic elements in a traditional market modification case.<sup>74</sup> These showings notably strengthen its case.

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<sup>64</sup> *Petitions* at 1, 3. One Shreveport DMA broadcast station (NBC affiliate KTAL-TV, Facility ID 35648) is licensed to Texarkana, a community on the Texas border. Its transmitter site and main studio, however, are both located in Louisiana. *KTAL-TV Online Public Inspection File* (<https://publicfiles.fcc.gov/tv-profile/ktal-tv>).

<sup>65</sup> *Petitions* at 1, 3.

<sup>66</sup> *Id.*

<sup>67</sup> *See supra* notes 38 and 39 and accompanying text.

<sup>68</sup> The "core purpose of this [market modification] provision of the STELAR [is] to promote consumer access to in-state and other relevant programming." *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10415, para. 12. *See also supra* para. 5.

<sup>69</sup> *Senate Commerce Committee Report* at 11.

<sup>70</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10421, para. 18.

<sup>71</sup> *See supra* note 13.

<sup>72</sup> *Id.* at 10417, n.61.

<sup>73</sup> *Id.* at 10418, para. 15.

<sup>74</sup> *See, e.g., Tennessee Broadcasting Partners*, 23 FCC Rcd 3928 (MB 2008). *NB*: like all pre-STELAR market modification cases, *Tennessee* is a cable case, not a DBS case. The most important difference, however, is that

### C. Market Modification Analysis<sup>75</sup>

23. *Historic Carriage.* The first factor we must consider is “whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community; or have been historically carried on the satellite carrier or carriers serving such community.”<sup>76</sup> Petitioner offers no supportive evidence of historic MVPD carriage<sup>77</sup> and concedes “a lack of historical carriage” of the Stations.<sup>78</sup> Petitioner nonetheless argues that this lack of historic carriage should not weigh against the requested market modification and asserts that “the County has long been assigned by Nielsen to an out-of-state DMA [and] STELAR’s market modification provision marks the first opportunity in many years for the County to receive the Stations’ signal over satellite.”<sup>79</sup> While we understand that there is usually not strong evidence of historic carriage in orphan counties, we find that this factor weighs against the proposed market modification because of the lack of such carriage.

24. *Local Service.* Second, we consider “whether the television station provides coverage or other local service to the community.”<sup>80</sup> This factor includes, in part, consideration of “a station’s signal contour coverage and whether the station places at least a Grade B contour over the cable communities, the station’s proximity to the communities in terms of mileage, and whether it broadcasts local programming with a distinct nexus to the Communities.”<sup>81</sup> Petitioner provides evidence that the County is largely within the Stations’ over-the-air service contours.<sup>82</sup> With regard to local programming, we note that the Stations broadcast local news programming several times a day, including local news, weather, and sports programming targeted to East Texas that is of interest to residents of the County.<sup>83</sup>

25. In determining the extent of local service provided by the Stations, we also consider the support for the modifications from local residents and their official representatives. As the *STELAR Market Modification Report and Order* made clear, such comments are enormously helpful in demonstrating a nexus between the stations and the local community.<sup>84</sup> In this case, we give positive

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Petitioner’s case involves orphan counties, not that the markets being modified are satellite rather than cable markets.

<sup>75</sup> Because the Petitions are substantively identical and the Stations are identically situated with respect to carriage into Panola County, we consider them collectively in our analysis below.

<sup>76</sup> 47 U.S.C. § 338(l)(2)(B)(i).

<sup>77</sup> Petitioner submits as evidence for the first factor what it terms as “a basic lineup card of coverage” as Exhibit 4. *Petitions* at 5-6, Exhibit 4. This submission appears to be a general programming guide (television guide listings) for stations KLTV, KETK, KFXK, and KYTX. Handwritten on the submission is “tvty.us”; however no explanation is given as to whether this programming guide comes from the broadcast providers or may be from a cable or satellite provider. As such, we do not find this Exhibit submitted by the Petitioner without elaboration or clarification as supportive evidence of cable system or satellite carrier historic carriage of the Stations.

<sup>78</sup> *Petitions* at 5.

<sup>79</sup> *Id.*

<sup>80</sup> 47 U.S.C. § 338(l)(2)(B)(ii). To show that a station provides coverage or other local service to communities at issue in a market modification petition, parties must provide “noise-limited service contour maps ... delineating the station’s technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas.” 47 CFR § 76.59(b)(2). A station’s broadcast of programming specifically targeted to the community at issue may also serve as evidence of local service. *See, e.g., Jones Cable TV Fund 12-A, Ltd.*, 14 FCC Rcd 2808, 2818, at para. 24 (CSB 1999) (*Jones Cable*).

<sup>81</sup> *See Mountain Broadcasting Corporation; For Modification of the Television Market for WMBC-TV, Newton, New Jersey*, Memorandum Opinion and Order, 27 FCC Rcd 2231, 2236, para. 10 (MB 2012).

<sup>82</sup> *Petitions* at 6, Exhibit 5.

weight to the comments received from residents and their government representatives supporting the Petitions.<sup>85</sup>

26. As discussed above, evidence related to geographic proximity is not determinative in the consideration of a market modification request involving an orphan county, and we generally expect to look more to evidence of community support or relevant programming than to evidence of proximity in orphan county cases.<sup>86</sup> In the instant case, however, the Petitioner has demonstrated that the Stations provide substantial over-the-air coverage of the County, and it has offered compelling evidence of community support for access to the Stations. The Petitioner also has identified a substantial amount of local news programming broadcast by the Stations. Based on the overall evidence, we find that the second statutory factor weighs in favor of the requested modification.

27. *Access to In-State Stations.* The third factor we consider is “whether modifying the local market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence.”<sup>87</sup> This factor is satisfied by introduction of an in-state station to a community, but weighs more heavily in favor of modification if the petitioner shows that the involved station provides programming specifically related to subscribers’ state of residence, and may be given even more weight if subscribers in the new community have little (or no) access to such in-state programming.<sup>88</sup> KFXK is a FOX affiliate licensed to Longview, Texas, and KLTV is an ABC affiliate licensed to Tyler, Texas, both communities within the same state as Panola County. Both Stations provide programming specifically related to Texas. The Petitioner states that grant of the market modification “will allow the County to access news, politics, sports, and emergency information and other television programming from its own area.”<sup>89</sup> The comments received in this proceeding from County residents strongly support the need and desire to have access to in-state programming that they currently

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<sup>83</sup> See *supra* note 77. The programming guide referenced in that footnote lists these local news programs: KLTV broadcasts “East Texas First News, KLTV Saturday News, and KLTV Sunday News.” KFXK broadcasts “Fox 51 News East Texas.”

<sup>84</sup> 30 FCC Rcd at 10417, n.61 (“[L]ocal government and consumer comments in a market modification proceeding can help demonstrate a station’s nexus to the community at issue.”).

<sup>85</sup> Supportive comments were received from Members of Congress as well as from local officials. See *supra* para. 11 and note 37. See also generally consumer comments in the *Petitions* at Exhibits 1 (“Panola Watchman June 14, 2018 online article with 30 constituent’s [sic] comments attached.”); Exhibit 2 (“Panola County Commissioners’ Court sign-in sheet for June 12, 2018 meeting.”); and, Exhibit 6 (“Letters of support from 46 citizens.”). See, e.g., (We note that some comments did not include an individual’s name at all, but were only identified by a unique personal email address; in those instances, where a commenter’s name was not apparent, we identified them by a partially-redacted version of the email address provided.): Cindy Ellison Comments (“I am in support of the petition to add KLTV and KFXK to our satellite TV networks in Panola County. I have lived in Panola County for 32 years and never received any Texas channels. I do believe we deserve this right.”); Joe and Julie Perez Comments (“I am a Panola County resident who supports the petition to add KLTV and KFXK to our Direct TV satellite TV network.”); Mr. and Mrs. Dan L. Melton Comments (“We support movement to attain Texas TV channels in Panola County.”); 513j\*@\*.com Comments (“I am in full support of this petition to add the Tyler stations to our channel lineups. . . . most important to me is [KFXK] 51 because of the Saints vs. Cowboys issue. I would also prefer to have the Tyler stations to get weather updates before they start affecting the Shreveport area and are already on top of us.”); uva1\*@\*.com Comments (“I am one of the many Panola Co residence [sic] that would love to have access to our local Texas stations. I would really like to know what is happening in Texas and around the East Texas area not Shreveport and Louisiana and Arkansas. Also the Fox channel will primarily show the Saints game over the Cowboys.”); Sara Escoe Comments (“We miss the Tyler stations and most of all Texas news.”); Louis Johnagin Comments (“I am in favor of the Panola County petition to add Texas channels 7 and 51 to DISH Network and

lack.<sup>90</sup> Based on the unrefuted claims of unique in-state programming available from the Stations, we give the third statutory factor the greatest possible weight in favor of the requested modification.

28. *Other Local Stations.* Fourth, we consider “whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community.”<sup>91</sup> In general, the Commission has interpreted this factor as enhancing a station’s market modification petition if other stations do not sufficiently serve the communities at issue; however, other stations’ service to the communities rarely has counted against a petition.<sup>92</sup> With respect to this factor, the County states that it “is familiar with Shreveport broadcast stations that should deliver local content, but is unaware of another in-state local broadcast station carried by a satellite provider in the County that offers Longview and Texas-oriented news coverage of issues of concern to the degree expected by residents of the County.”<sup>93</sup> The County also submits an Exhibit regarding this factor, which it states is “a listing of Texas Sporting Teams that are preempted in the County for coverage of Louisiana teams.”<sup>94</sup>

29. The Petitioner states that it knows of Shreveport broadcast stations that “should” deliver local programming content to County residents, but it does not name the stations or further discuss the content or how the stations may or may not serve local satellite subscribers. Regarding sporting events, it appears that the County is not satisfied with the amount of coverage Louisiana stations are giving to Texas teams. We also note that the Petitioner is partially misreading factor four, which is not concerned with the “in-state” location or focus of the existing eligible stations. Instead, under this factor we look only for the presence of locally-relevant content in the news and events coverage of the existing in-market stations. The record before us does not provide any definitive evidence that other stations do provide locally relevant service, and it is evident from consumer comments that there is dissatisfaction with the coverage provided by the stations available to them today.<sup>95</sup> The lack of opposition to the market modification

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Direct-TV’s local line-ups.”); John W. Gatlin Comments (“I’ve been trying to get Texas news at my home here on the south west side of lake Murvaul for the past 20 years. After many letters written to numerous TV stations in Northeast Texas and Northeast Louisiana for help . . . [I have been] told ‘you live in the wrong zip code . . . to receive local Texas news by satellite.’”); Karen Marsalis Comments (“We are petitioning you, Federal Communications Commission, to add our local news stations as part of the Satellite Television Extension and Localism Act of 2010 and add KLTW and KFXK to our satellite line-ups.”); Philip N. and Linda B. Henigan Comments (“We strongly favor the petition to add Texas stations to satellite TV local stations (Channel 7, Tyler & Channel 51, Longview) for the Panola County area.”); Ken Pauley Comments (“All of our elections we don’t even know who voted for who, and that’s the main thing: To get the local news where we can understand what’s going on in our area.”); Kay Williamson Comments (“This will be great. We need local news from Texas, not Louisiana.”); Barbara Jean Zurfluh Comments (“To finally get Texas news, sports, weather & politics would be a long overdue blessing for us.”); Goldie Hall Straight Comments (“antenna will get you [T]yler, and others until bad weather comes through then we lose signal.”); Martha Arnold Comments (“Please get Tyler 51 and 7.”); Wanda Cullum Wilkins Comments (“It needs to be! That is the closest station that has all the news for our area. We used to get those stations and it was great! Tired of Louisiana and Arkansas weather.”); Shannon Kaye Ebarb Comments (“Love to have the Tyler station.”); Bryan Langford Comments (“If you insist on satellite, then you need Tyler.”); Harvey Briggs Comments (“No more wondering whether KMSS will be showing a [C]owboys or [S]aints game . . . and having to go online and watching a horrible webcast of the game.”); Janet Weatherford Comments (“We would much rather have Tyler news than Shreveport news.”); Carol Moore Tyler Comments (“Yes Tyler!”).

<sup>86</sup> See *supra* para. 21.

<sup>87</sup> 47 U.S.C. § 338(l)(2)(B)(iii).

<sup>88</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10420, para. 18.

from any in-market stations and the available evidence suggest that existing stations do not fully serve the County. Overall, we find that the fourth statutory factor weighs in favor of the requested modification.

30. *Viewing Patterns.* Finally, we consider “evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community.”<sup>96</sup> We do not expect to find strong evidence of regular viewing in orphan counties, and Petitioner offers no evidence relevant to this factor.<sup>97</sup> We therefore accord this factor negative weight.

#### IV. CONCLUSION

31. The issue before us is whether to grant Petitioner’s requests to modify the local satellite carriage markets of KFXK and KLTV, both of which are located in the Tyler-Longview DMA, to include Texas’s Panola County, which is currently assigned by Nielsen to the Shreveport, LA DMA. Section 338(l) permits the Commission to add or exclude communities from a station’s local television market to better reflect market realities and to promote residents’ access to local programming from broadcasters located in their State.<sup>98</sup> Under this statutory provision, the Commission must afford particular attention to the value of localism.<sup>99</sup>

32. With respect to KFXK and KLTV, we are persuaded by the overall strength of the evidence that a sufficient market nexus exists between the Stations and Panola County. We accordingly grant the requests for market modification, and order the addition of Panola County to the local markets of KFXK and KLTV on both DISH and DIRECTV.<sup>100</sup>

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<sup>89</sup> *Petitions* at 3.

<sup>90</sup> *See supra* note 85.

<sup>91</sup> 47 U.S.C. § 338(l)(2)(B)(iv).

<sup>92</sup> *See, e.g., Petition for Modification of Dayton, OH Designated Mkt. Area with Regard to Television Station WHIO-TV, Dayton, OH*, Memorandum Opinion and Order, 28 FCC Rcd 16011, 16019, para. 22 (MB 2013); *Petition of Tennessee Broad. Partners for Modification of the Television Market for WBBJ-TV/DT, Jackson, Tennessee*, Memorandum Opinion and Order, 23 FCC Rcd 3928, 3947, para. 49 (MB 2008).

<sup>93</sup> *Petitions* at 5-6.

<sup>94</sup> *Id.* at 6, Exhibit 7. The Exhibit is a page displaying the logos of the professional sports teams in Texas: NFL Dallas Cowboys, Houston Texans; MLB Houston Astros, Texas Rangers; and, NBA Dallas Mavericks, Houston Rockets, and San Antonio Spurs.

<sup>95</sup> *See supra* note 85. These comments express a preference for Texas-based news, weather, politics and sporting events, but it is not always clear from the comments whether there is no existing coverage of these topics, or only partial coverage as in the case of sporting events, or the coverage is simply not provided by a Texas-based station.

<sup>96</sup> 47 U.S.C. § 338(l)(2)(B)(v).

<sup>97</sup> *Petitions* at 6 (“to the extent necessary, we respectfully request a waiver of this item.”). The Petitioner states that residents of the County have had little opportunity to develop any viewing patterns for the Stations due to lack of historical carriage of the Stations in the County. *Id.* at 5.

<sup>98</sup> *STELAR Market Modification Report and Order*, 30 FCC Rcd at 10412-13, para. 7.

<sup>99</sup> *Id.*

<sup>100</sup> We remind KFXK and KLTV of their individual obligations to elect retransmission consent or mandatory carriage with respect to Panola County within 30 days of the release of this item. We also remind DISH and DIRECTV of their obligation to commence carriage within 90 days of that election, unless the station(s) have elected retransmission consent and the parties have not agreed to carriage. 47 CFR § 76.66(d)(6).

**V. ORDERING CLAUSES**

33. Accordingly, **IT IS ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.59 of the Commission's rules, 47 CFR § 76.59, that the captioned petition for special relief (MB Docket No. 18-337, CSR No. 8965-A) filed by Panola County, Texas with respect to KFXK-TV, Longview, Texas (Facility ID No. 70917), **IS GRANTED**.

34. **IT IS FURTHER ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.59 of the Commission's rules, 47 CFR § 76.59, that the captioned petition for special relief (MB Docket No. 18-338, CSR No. 8966-A) filed by Panola County, Texas with respect to KLTV, Tyler, TEXAS (Facility ID No. 68540), **IS GRANTED**.

35. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's Rules.<sup>101</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Senior Deputy Chief, Media Bureau, Policy Division

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<sup>101</sup> 47 CFR § 0.283.